

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROY L. ALFORD,	§	
	§	No. 477, 2009
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. D No. 92K05709DI
Appellee.	§	

Submitted: November 3, 2009

Decided: February 16, 2010

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

**ORDER**

This 16<sup>th</sup> day of February 2010, upon consideration of the appellant's opening brief, the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), and the Superior Court record, it appears to the Court that:

(1) The appellant, Roy L. Alford, filed an appeal from the Superior Court's July 15, 2009 denial of his motion for correction of illegal sentence under Superior Court Criminal Rule 35(a). The appellee, State of Delaware, has moved to affirm the Superior Court's judgment on the basis that it is

manifest on the face of Alford's opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) In 1993, Alford was found guilty by a Superior Court jury of Robbery in the First Degree, Possession of a Deadly Weapon During the Commission of a Felony, Resisting Arrest, and Trespass in the Second Degree. In April 1993, Alford was sentenced as a habitual offender to life imprisonment. On direct appeal, this Court affirmed Alford's convictions.<sup>2</sup> Thereafter, this Court affirmed the Superior Court's denial of postconviction relief.<sup>3</sup>

(3) On June 4, 2009, Alford filed a motion for correction of illegal sentence under Rule 35(a). Alford sought relief on the basis that the State's habitual offender motion was defective. According to Alford, the documentary evidence attached to the motion did not prove beyond a reasonable doubt that he was the same "Roy Alford" who was convicted of the predicate felonies listed in the motion. By order dated July 15, 2009, the Superior Court summarily denied Alford's sentence correction motion. This appeal followed.

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<sup>1</sup> Del. Supr.Ct. R. 25(a).

<sup>2</sup> *Alford v. State*, Del. Supr., No. 156, 1993, Moore, J. (Feb. 4, 1994) (ORDER).

<sup>3</sup> *Alford v. State*, 1997 WL 619129 (Del. Supr.).

(4) After careful consideration of the parties' positions on appeal and the Superior Court record, we have concluded that the denial of Alford's sentence correction motion should be affirmed. Absent extraordinary circumstances, a motion to correct a sentence imposed in an illegal manner must be filed within ninety days of sentencing.<sup>4</sup> In this case, the sentence correction motion was filed more than sixteen years after sentencing and thus was untimely. Alford has not demonstrated, nor does the record reflect, that extraordinary circumstances warrant review of the motion at this late date.<sup>5</sup>

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>4</sup> Del. Super. Ct. Crim. R. 35(a), (b).

<sup>5</sup> The record reflects that Alford had notice of the State's motion to declare him a habitual offender and was fully apprised of the factual basis for the motion as well as the documentary evidence the State intended to rely on in support of the motion. Thereafter, Alford appeared before the Superior Court for sentencing and was provided an opportunity to be heard and to confront the evidence against him. Alford did not raise his claim of mistaken identity at sentencing, on direct appeal, in his motion for postconviction relief, or in a prior sentence correction motion that was denied in September 2006.